278.

SUPREME COURT OF THE UNITED STATES.

No. 96.

CHARLES BALLANCE, PL'FF IN ERROR,

vs.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, AND MARY L. SARGEANT.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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GIDEON, Print.

UNITED STATES OF AMERICA,
Northern District of Illinois.

Pleas in the Circuit Court of the United States for the northern district of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. John McLean, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, associate.

On Wednesday, the twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first year.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, vs. CHARLES BALLANCE. } In Ejectment.

Be it remembered, that heretofore, to wit, on the 21st day of December, in the December term, A. D. 1854, of the circuit court of the United States for the district of Illinois, came into said court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs, by Messrs. Manning and Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, and also their bond in the above entitled cause, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States, in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

James Hart and Elizabeth Hart, James Sargeant and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri, one of the United States of America, complain of Charles Ballance, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one, in the village of Peoria, confirmed to the heirs of Charles La Belle by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the

State of Illinois, covered by lot two, in block thirty-nine, in Ballance's addition to the town of Peoria, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east of the fourth principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. On the first day of the next term of the circuit court of the United States, within and for the district and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That, upon filing the same, a rule will be entered, requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiffs.

Dated Dec. 8th, 1854.

STATE OF ILLINOIS,
County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally, on the eleventh day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, Jacob Gale, clerk of the circuit court of Peoria county, this eleventh day of December, A. D. 1854.

[SEAL.] Witness my hand and the seal of said court, at Peoria, the day and year last aforesaid.

JACOB GALE, *Clerk.*

Endorsed: Filed Dec. 21st, 1854.

WM. POPE, *Clerk.*

UNITED STATES OF AMERICA,
State and District of Illinois.
Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto Charles Ballance, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Ballance, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly, by these presents. Witness my hand and seal the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois, against Charles Ballance: Now, if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Endorsed: Filed this 21st day of Dec., A. D. 1854.
WM. POPE, *Clerk.*

And on the same day, to wit, the 21st day of December, A. D. 1854, in the record of the proceedings of said court, in the above entitled cause, is the following entry, to wit:

SAMUEL HART et al.
vs.
CHARLES BALLANCE. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiff, by their said attornerys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on 12th day of January, A. D. 1855, in the December term, A. D. 1854, of said court, came into court the said Charles Ballance, defendant, and filed his plea in the said cause, in the words and figures following, to wit:

CHARLES BALLANCE ads. SAMUEL HART et al. } In Ejectment.

United States Court, Dec. term, 1854, district of Illinois.

Said defendant, in propria persona, comes and defends the force and injury, when, &c., and says said plaintiff actio non, because, he says, he is not guilty of the trespass and ejectment in said declaration charged against him in manner and form as the same is therein charged and alleged against him; and of this he puts himself upon the country, &c.

C. BALLANCE.

Endorsed: Filed January 12th, 1855.

WM. POPE, *Clerk*.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, vs. WILLIAM A. WELLS. } In Ejectment.

Be it remembered, that heretofore, to wit, on the 21st day of December, in the December term, A. D. 1854, of the circuit court of the United States for the district of Illinois, came into said court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice and affidavit of service, and also their bond in the above entitled cause, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Samuel Hart and Elizabeth Hart, James Sargeant and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri, one of the United States of America, complain of William A. Wells, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one, in the village of Peoria, confirmed to the heirs of Charles La Belle by the confirmatory act of Congress approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, covered by the southwesterly half of lot four in

block thirty-nine in Ballance's addition to the town of Peoria, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east of the fourth principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that they unlawfully withhold from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. On the first day of the December term of the circuit court of the United States within and for the district and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such a rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Dated Dec. 8th, 1854. *Attorneys for Plaintiffs.*

STATE OF ILLINOIS, *County of Peoria.*

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally, on the 12th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me this 16th day of December, A. D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Endorsed: Filed Dec. 21st, 1854.

WM. POPE, *Clerk.*

UNITED STATES OF AMERICA,
State and District of Illinois.
Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State of Illinois, am held and firmly bound unto William A. Wells, or to the officers of the circuit court of the United States for the district of Illinois, in *in* the sum of five hundred dollars, to be paid to said Wells, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally and firmly, by these presents. Witness my hand and seal the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargeant and Mary L. Sargeant, have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois, against William A. Wells: Now, if the said Merriman, heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Endorsed: Filed this 21st day of Dec., A. D. 1854.
WM. POPE, *Clerk.*

And on the same day, to wit, the 21st day of December, A. D. 1854, in the record of the proceedings of said court in the above entitled cause, is the following entry, to wit:

SAMUEL HART et al.
vs. } Ejectment.
WILLIAM A. WELLS.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and, upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A. D. 1855, of the December term, A. D. 1854, of said court, came into court the said William A. Wells, defendant, by C. Ballance, his attorney, and filed his plea in the above entitled cause, in the words and figures following, to wit:

WILLIAM A. WELLS
ads. } In Ejectment.
SAMUEL HART et al.

United States Court, Dec. term, A. D. 1854, district of Illinois.

Said defendant, in proper person, comes and defends the force and injury, when, &c., and says said plaintiff actio non, because he says he is not guilty of the trespass and ejectment in said declaration charged against him in manner and form, as the same are therein alleged and set forth; and of this he puts himself upon the country, &c.

C. BALLANCE, *Def'ts' Attorney.*

Endorsed: Filed Jan'y 12th, 1855.

WM. POPE, *Clerk.*

And afterwards, to wit, on the 11th day of July, in the July term, A. D. 1855, of said court for the northern district of Illinois, in the record of the proceedings thereof in the above entitled cause is the following entry, to wit:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT & MARY L. SARGEANT, vs. WILLIAM A. WELLS. } Ejectment.

By agreement of the parties, by their attorneys, it is ordered by the court that the name of Charles Ballance be substituted upon the record herein as the party defendant in the place and stead of the present defendant.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, vs. FREDERICK MAINGHAFF. } Ejectment.

Be it remembered that heretofore, to wit, on the 21st day of December, in the December term, A. D. 1854, of the circuit court of the United States for the district of Illinois, came into said court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs, by Manning and Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, and also their bond in the above entitled cause, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri,

one of the United States of America, complain of Frederick Mainghaff, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one, in the village of Peoria, confirmed to the heirs of Charles La Belle by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, covered by part of lot seven, in block No. forty, in Ballance's addition to the town of Peoria, described as follows: ninety feet on Walnut street, by the width of said lot on Adams street, reference being had to the plat of said addition; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say they are injured and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. On the first day of the next term of the circuit court of the United States, within and for the district and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiffs.

Dated Dec. 8th, 1854.

STATE OF ILLINOIS, *County of Peoria.*

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are

copies, upon the within named defendant, by delivering the same to him personally on the 12th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me this 16th day of December, A. D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Endorsed: Filed Dec. 21st, 1854.

WM. POPE, *Clerk.*

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto Frederick Mainghaff, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Mainghaff, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargeant, Mary L. Sargeant, have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois against Frederick Mainghaff: Now, if the said Merriman, heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Endorsed: Filed this 21st day of Dec., A. D. 1854.

WM. POPE, *Clerk.*

And on the same day, to wit, the 21st day of December, A. D. 1854, in the record of the proceedings of said court in the above entitled cause is the following entry, to wit:

SAMUEL HART et al.
vs.
FREDERICK MAINGHAFF. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their de-

claration in ejectment herein, together with the notice in writing thereto attached; and, upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A. D. 1855, in the December term, A. D. 1854, of said court, came into court the said Frederick Mainghaff, defendant, by C. Ballance, his attorney, and filed his plea in the above entitled cause in the words and figures following, to wit:

SAMUEL HART et al.
vs.
FREDERIC MAINGHAFF. } In Ejectment.

In the United States Circuit Court for the district of Illinois, December term, A. D. 1854.

Said defendant, by Ballance, his attorney, comes and defends the force and injury, when, &c., and says said plaintiff actio non, because he says he is not guilty of the trespass and ejectment in said declaration charged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendant.

Endorsed: Filed Jan'y 12th, 1855.

WM. POPE, *Clerk.*

SAMUEL HART, ELIZABETH HART,
JAMES SARGEANT, MARY L. SARGEANT,
vs.
CASPAR OEDEWALDT. } Ejectment.

Be it remembered that heretofore, to wit, on the 5th day of January, A. D. 1855, in the December term, A. D. 1854, of the circuit court of the United States, for the district of Illinois, came into said court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs, by Messrs. Manning and Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, in the above entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois, ss.

In the Circuit Court of the United States in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Samuel Hart, Elizabeth Hart, and James Sargeant, and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri, one of the United States of America, complain of Casper Oedewaldt, defendant in this suit, who is a citizen and inhabitant of the

State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs possessed of certain premises situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one in the village of Peoria, confirmed to the heirs of Charles La Belle by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, covered by part of the southwesterly half of lot eight, in block thirty-nine, in Ballance's addition to the town of Peoria, in the State of Illinois, *covered by part of the southwesterly half of lot eight in block thirty-nine, in Ballance's addition to the town of Peoria*, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight, east of the fourth principal meridian, and being thirty feet front on Washington street, by eighty-five in depth; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withheld from the plaintiff the possession thereof; and said plaintiffs aver that *he* claim title to said premises in fee; and said plaintiff further aver that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars, whereof said plaintiff say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. That on the 7th day of the next term of the circuit court of the United States, within and for the district and State of Illinois, to be held at the city of Springfield, in the State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiff.

Dated Dec. 8, 1854.

STATE OF ILLINOIS,
County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally, on the 19th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, Jacob Gale, clerk of the circuit court of Peoria county, Illinois, this nineteenth day of October, A. D. 1854. Witness my hand and the seal of said court.

JACOB GALE, *Clerk.* [SEAL.]

Endorsed: Filed Jan'y 5th, 1855.

WM. POPE, *Clerk.*

And on the same day, to wit, the 5th day of January, A. D. 1855, as yet of said December term, A. D. 1854, of said court, in the record of the proceedings thereof in the above entitled cause is the following entry, to wit:

SAMUEL HART et al.
vs. } Ejectment.
CASPER OEDEWALT.

This day came the plaintiffs by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs by their attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 11th day of January, A. D. 1855, said plaintiffs, by their attorneys, filed with the clerk of said court their bond in the above entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, Julius Manning, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto Caspar Oedewardt, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Oedewaldt, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly, by these presents. Witness my hand and seal the 5th day of January, in the year of our Lord one thousand eight hundred and fifty-five.

The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargent, and Mary L. Sargent have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois, against Caspar Oedewaldt: Now, if the said plaintiffs or said Julius Manning, their heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against them, the said plaintiffs, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of said Oedewaldt, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

JULIUS MANNING. [L. S.]

Endorsed: Filed this 11th day of Jan'y, A. D. 1855.

WM. POPE, *Clerk.*

And afterwards, to wit, on the 12th day of January, A. D. 1855, in the December term, A. D. 1854, of said court, came into court the said Caspar Oedewaldt, defendant, by C. Ballance, his attorney, and filed his plea in the above entitled cause, in the words and figures following, to wit:

CASPER OEDEWALDT ads. S. HART et al. } Ejectment.

UNITED STATES OF AMERICA,
District of Illinois.

In the Circuit Court—Of the December term, 1854.

Said defendant comes and defends the force and injury, when, &c., and prays judgment of the said declaration and notice, because he says said premises, being the matter in controversy in this suit, are not of the value of five hundred dollars, besides costs, and of this he puts himself upon the country, &c.

C. BALLANCE, *for Def't.*

On the 12th day of January, 1854, the within named Charles Ballance made oath before me, that the within plea was true, according to the best of his judgment; and that he is acquainted with the above property, and believes it not worth $500.

C. BALLANCE.

Subscribed and sworn to before me this 16th January, 1855.

S. A. CORNEAU,
U. S. Com'r, Dis't Ill.

Endorsed: Filed Jan'y 12th, 1855.

WM. POPE, *Clerk.*

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, vs. CONRAD GORGER. } Ejectment.

Be it remembered, that heretofore, to wit, on the 5th day of January, A. D. 1855, in the December term, A. D. 1854, of the circuit court of the United States for the district of Illinois, came into court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, plaintiffs, by Messrs. Manning and Merriman, their attorneys, and filed in open court their declaration, notice, and affidavit of service in the above entitled cause, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Samuel Hart, and Elizabeth Hart, and James Sargeant, and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri, one of the United States of America, complain of Conrad Gorger, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiff possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one in the village of Peoria, confirmed to the heirs of Charles La Belle by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, covered by part of the southwesterly half of lot eight, in block thirty-nine, in Ballance's addition to the town of Peoria, and being thirty feet on the alley in said block thirty-nine, by eighty-five in depth; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withheld from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiff say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. On the 7th day of the next term of the circuit court of the United States within and for the district and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,

MANNING & MERRIMAN,
Attorneys for Plaintiff.

Dated Dec. 8th, 1854.

STATE OF ILLINOIS,
County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally on the 19th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, Jacob Gale, clerk of the circuit court of Peoria county, Illinois, this nineteenth day of December, A. D. 1854.

Witness my hand and the seal of said court.

JACOB GALE, *Clerk.* [SEAL.]

Endorsed: Filed Jan'y 5th, 1855.

WM. POPE, *Clerk.*

And on the same day, to wit, the 5th day of January, A. D. 1855, in the record of the proceedings of said court in the above entitled cause is the following entry, to wit:

SAMUEL HART et al.
vs.
CONRAD GORGER. } Ejectment.

This day came the plaintiffs by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs by their attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 11th day of January, A. D. 1855, the

said plaintiffs, by their attorneys, filed in said court their bond in the above entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State and District of Illinois.
Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, Julius Manning, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto Conrad Gorger, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Gorger, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal the 5th day of January, in the year of our Lord one thousand eight hundred and fifty-five.

The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States for the district of Illinois, against Conrad Gorger: Now, if the said plaintiffs, or said Manning, their heirs, executors or *or* administrators, shall well and truly discharge all costs that may accrue and be adjudged against them, the said plaintiffs, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of s'd Gorger, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

JULIUS MANNING. [L. S.]

Endorsed: Filed this 11th day of Jan'y, A. D. 1855.
WM. POPE, *Clerk.*

And on the 12th day of January, A. D. 1855, in said December A. D. 1854, of said court, came into court the said Conrad Gorger, by C. Ballance, his attorney, and filed his plea in the above entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Illinois.
In the Circuit Court—Of the December term, 1854.

CONRAD GORGER ads. SAMUEL HART et al. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and prays judgment of said declaration and notice, because, he says

that the value of said premises, being the matter in dispute, does not exceed, exclusive of costs, the sum of five hundred dollars, and of this he puts himself upon the country, &c. Wherefore he prays judgment, &c.

C. BALLANCE, *for Def't.*

Endorsed: Filed Jan'y 12th, 1855.

WM. POPE, *Clerk.*

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, vs. JOHN ERNEST. } Ejectment.

Be it remembered that heretofore, to wit, on the 5th day of January, A. D. 1855, in the December term, A. D. 1854, of the circuit court of the United States for the district of Illinois, came into said court the said Samuel Hart, Elizabeth Hart, James Sargeant, and Mary Sargeant, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service in the above entitled cause, which are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District and State of Illinois.

In the Circuit Court of the United States in and for the district and State of Illinois.—Of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Samuel Hart, Elizabeth Hart, James Sargeant and Mary L. Sargeant, plaintiffs in this suit, who are citizens of the State of Missouri, one of the United States of America, complain of John Ernest, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. sixty-one in the village of Peoria, confirmed to the heirs of Charles La Belle, by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," covered by the northeasterly half of lot eight, in block thirty-nine, in Ballance's addition to the town of Peoria, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east of the fourth principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs

the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above named defendant: Take notice, that—

1. On the 7th day of the next term of the circuit court of the United States, within and for the district and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiff.

Dated December 7th, 1854.

STATE OF ILLINOIS, *County of Peoria.*

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally, on the 19th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, Jacob Gale, clerk of the circuit court Peoria county, Illinois, this nineteenth day of December, A. D. 1854. Witness my hand and the seal of said court.

JACOB GALE, *Clerk.* [SEAL.]

Endorsed: Filed Jan'y 5th, 1855.

WM. POPE, *Clerk.*

And on the same day, to wit, the 5th day of January, A. D. 1855, in the record of the proceedings of said court, in the above entitled cause, is the following entry, to wit:

SAMUEL HART et al.
vs. } Ejectment.
JOHN ERNEST.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto

attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 11th day of January, in the year of our Lord 1855, came the said plaintiffs, by their attorneys, into said court and filed their bond in the above entitled cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State and District of Illinois.

Circuit Court, December term, A. D. 1854.

Know all men by these presents, that I, Julius Manning, of the county of Peoria, and State and district of Illinois, am held and firmly bound unto John Ernest, or to the officers of the circuit court of the United States for the district of Illinois, in the sum of five hundred dollars, to be paid to said Ernest or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal the 5th day of January, in the year of our Lord one thousand eight hundred and fifty-five. The condition of the above obligation is such, that whereas Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant have this day, to wit, at the date of the above written, instituted a suit in the said circuit court of the United States, for the district of Illinois, against John Ernest: Now, if the said plaintiffs, or s'd Manning, their heirs, executors or administrators, shall well and truly discharge all costs that may accrue and be adjudged against them, the said plaintiffs, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of s'd Ernest, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

JULIUS MANNING. [L. S.]

Endorsed: Filed this 11th day of Jan'y, A. D. 1855.
WM. POPE, *Clerk.*

And on the 12th day of January, A. D. 1855, as yet of said December term, A D. 1854, of said court, came into court the said John Ernest, defendant, by C. Ballance, his attorney, and filed his plea in the above entitled cause, in the words and figures following, to wit:

JOHN EARNEST
ads. } In Ejectment.
SAMUEL HART et al.

United States Court, Dec. term, 1854.

Said defendant comes and defends the force and injury, when, &c.,

and says said plaintiffs actio non, because he says that he is not guilty of the trespass and ejectment in and by said declaration charged against him in manner and form as the same are therein alleged and set forth, and of this he puts himself upon the country, &c.

C. BALLANCE,
Att'y for Def't.

Endorsed: Filed Jan'y 12th, 1855.

WM. POPE, *Cl'k.*

And afterwards, to wit, on the 20th day of July, in the July term, A. D. 1855, of the said circuit court for the northern district of Illinois, in the record of the proceedings thereof, in the following named cases, is the following entry, to wit:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, and MARY L. SARGEANT, vs. FREDERICK MAINGHAFF. } 271.—In Ejectment.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, and MARY L. SARGEANT, vs. JOHN ERNEST. } 309.—Ejectment.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, and MARY L. SARGEANT, vs. CONRAD GÖRGER. } 312.—Ejectment.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, and MARY L. SARGEANT, vs. CASPAR ODEWALDT. } 313.—Ejectment.

By agreement of the parties, by their attorneys, and in conformity with their stipulation on file, it is ordered by the court, that the foregoing entitled causes, numbered 271, 309, 312, and 313, be consolidated, and that Charles Ballance be substituted upon the record herein as the party defendant, in the place and stead of the present defendants; and now come the parties, by their attorneys, and upon issue joined by agreement, they waive the intervention of a jury, and for trial put themselves upon the court, and after proceeding with the trial until the hour of adjournment, the further trial of the cause is postponed until to-morrow morning.

And afterwards, to wit, the next day, viz: the 21st day of July, A. D. 1855, in the record of the proceedings of said court in the case of Hart et al. against Ballance, as the same is substituted, in accordance with the last above recited entry, is the following entry, to wit:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT & MARY L. SARGEANT, vs. CHARLES BALLANCE. } 271 et al.—Ejectment.

Now come again the parties, by their attorneys, and the court, after hearing all the evidence, and being now sufficiently advised in the premises, finds the defendant guilty of unlawfully withholding from the possession of the plaintiffs, the land and premises described in their declaration, to wit, those premises situated in the county of Peoria, in the State of Illinois, described as follows, to wit: those portions of lot or claim No. sixty-one, in the village of Peoria, confirmed to the heirs of Charles La Belle, by the confirmatory act of Congress, approved March 3d, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as are covered by lot No. eight, in block thirty-nine, in Ballance's addition to the town of Peoria, as laid out on the southwest quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian; and by that part of lot seven, in block forty, in said addition, described as follows, to wit: Ninety feet on Walnut street, as laid out in said Ballance's addition, by the width of said lot seven, on Adams street, in said addition.

The court also finds the estate established in the plaintiffs on the trial to be an estate in fee simple, and assesses the plaintiffs' damages at the sum of one cent. It is thereupon considered and adjudged by the court, that the plaintiffs have and recover against the said defendant possession of said described tracts of land and premises, according to the force, form, and effect of their said recovery, and that they have a writ of possession therefor; and also that the plaintiffs have and recover of and from the said defendant the said sum of one cent, their damages as aforesaid assessed, together with their costs by them about their suit in this behalf expended, amounting to the sum of dollars and cents, and that they have execution therefor. And the defendant, by his attorney, moves the court to vacate the judgment herein under the statute, and to grant a new trial.

And afterwards, to wit, on the 23d day of July, in said July term A. D. 1855, of said court, in the record of the proceedings thereof in the last above entitled cause is the following entry, to wit:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT & MARY L. SARGEANT, vs. CHARLES BALLANCE. } 271.—Ejectment.

It appearing to the satisfaction of the court, that the defendant has paid and satisfied all the costs taxed in this cause, it is thereupon considered by the court, on motion of the defendant, by his attorney, that the judgment heretofore entered herein be vacated under the statute, and a new trial granted.

And afterwards, to wit, on the 22d day of July, in the July term A. D. 1856, of said court, in the record of the proceedings thereof in the following entitled causes is the following entry, to wit:

SAMUEL HART & ELIZABETH HART, JAMES SARGEANT & MARY L. SARGEANT, vs. CHARLES BALLANCE. } 153.—Ejectment.

SAMUEL HART & ELIZABETH HART, JAMES SARGEANT & MARY L. SARGEANT, vs. CHARLES BALLANCE. } 154.—Ejectment.

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT and MARY L. SARGEANT, vs. CHARLES BALLANCE. } 155.—Ejectment.

By agreement of the parties, by their attorneys in the said above entitled three causes, numbered 153, 154 and 155, it is ordered by the court that they be consolidated and docketed as one cause.

And on the next day, to wit, the 23d day of July, in said July term, A. D. 1856, of said court, in the record of the proceedings thereof in the case of Hart et al. against Ballance, as the same is substituted, in accordance with the last above recited entry, is the following entry, to wit:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT and MARY L. SARGEANT, vs. CHARLES BALLANCE. } Ejectment.

Now at this day came the parties, by their attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit, Daniel Bedee, Elisha Putman, Rufus Ordway, David J. Mixer, William McKee, Thomas Barrnett, William Henry, Peter Stout, Daniel P. Holt, M. Tagart, John Brown and D. Johnson, who were duly elected, tried and sworn, and after hearing the evidence, the jury returned the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiffs those premises situated in the county of Peoria, in the State of Illinois, described as follows, to wit: those portions of lot or claim No. sixty-one in the village of Peoria, confirmed to the heirs of Charles Labelle, by the confirmatory act of Congress, approved March 3d, A. D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," as are covered by lots No. two, four and eight, (2, 4 and 8,) in block thirty-nine in Ballance's addition to the town of Peoria, as laid out on the southwest quarter of section nine in township eight north, range eight east of the 4th principal meridian, and by that part of lot seven in block forty, in said addition, described as follows, to wit: ninety feet on Walnut street, as laid out in said Ballance's addition by the width of said lot seven, on Adams street, in said addi-

tion. We also find the estate established in the plaintiffs on the trial to be an estate in fee-simple, and we assess the damages of the plaintiffs at the sum of one cent. It is thereupon ordered and adjudged by the court, that the plaintiffs have and recover of and from the said defendant possession of the said described land and premises, according to the force, form and effect of their said recovery, and that they have a writ of possession therefor, and that they also have and recover of the defendant the said sum of one cent, their damages as aforesaid assessed, together with their costs by them about their suit in this behalf expended, amounting to the sum of dollars and cents, and that they have execution therefor.

And afterwards, to wit, on *on* the 6th day of August, in said July term, A. D. 1856, of said court, came the said Charles Ballance, defendant in the last above entitled cause, and filed in open court, with the clerk thereof, his bill of exceptions, which is in the words and figures following, to wit:

SAMUEL HART et al.
vs.
CHARLES BALLANCE.

July term, A. D. 1856.

Be it remembered, that before this cause and the causes in the affidavit below set forth were called for trial, defendant filed in court the following affidavit, to wit:

And thereupon moved the court to compel a consolidation of this cause and all the causes in said affidavit mentioned; but the court overruled said motion.

And thereupon moved the court to compel a consolidation of this cause and all the causes in said affidavit mentioned; but the court overruled said motion.

When the case was called for trial, the plaintiff, to maintain the issue on his part, introduced in evidence an act of Congress, approved May 15th, 1820, entitled "An act for the relief of the inhabitants of Peoria."

2d. He offered to read from vol. 3 of American State Papers a part of the report of Edward Coles, register of the land office at Edwardsville, Illinois, made to the Secretary of the Treasury, respecting the Peoria French claims. To the reading of which defendant objected, because there was nothing to show the authenticity of said printed volume; but the court overruled said objections, and a part of said report was given in evidence referring to this claim.

3d. He then read in evidence the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

4th. He then offered in evidence two plats, the one a connected survey of all the French claims at Peoria, and the other of the particular lot sued for in this action, to No. 61; which, together, showed that Joseph C. Brown, acting as deputy of the surveyor general of the

States of Illinois and Missouri, had, on the 11th day of April, 1837, located said lot No. 61 on the land in controversy; which said survey was approved by the surveyor general, Sept. 1st, 1840. Which plats were certified by the surveyor general of the States of Illinois and Missouri. To the introduction of these plats defendant objected, for the reason that they were certified from the wrong office. The certificates and plats were in the words following:

[*For plat see original, page* 50.]

Claim No. 61, situate in the southeast and southwest fractional quarter and the northwest quarter of fractional section 9, in fractional township 8, north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of an out-lot or field of 8 acres and a half of an acre of land, equal to 10 arpents, adjoining the new village of Peoria, in the State of Illinois, confirmed to the heirs of Charles La Belle by an act of Congress, approved the 3d of March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being No. 61 of the report made by the register of the land office at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

Description: Commence at a post the south corner of this lot, west corner of lot No. 46, north corner of lot No. 49, and east corner of lot No. 51; thence N. 46½° W. 10 chains and 46 links to a post the north corner of lot No. 51; 11 chs. and 96 links to a post at the intersection of the S. W. boundary of this lot with the line between the N. W. and S. W. quarter of section 9, township 8 north, range 8 east of the 4th principal meridian, said post being 9 chains and 60 links N. 89° 30′ W. of a stone set by a former surveyor as a corner common to the N. E., N. W., S. W., and S. E. quarters of said section 9; 15 chains and 40 links to a post the west corner of this lot; thence N. 43½° E. 5 chains 52 links and a ¼ of a link to a post the north corner of this lot; thence S. 46½° E. 9 chains and 84 links to a post at the intersection of the N. E. boundary of this lot with the line between the N. W. and S. W. quarters of section 9, of township 8 N., R. 8 E. of the 4th principal meridian, said post being 1 chain and 50 links N. 89° 30′ W. of a stone set by a former surveyor as a corner common to the N. E., N. W., S. W., and S. E. quarters of said section 9; 15 chains and

40 links to a post the east corner of this lot, west corner of lot No. 15, and north corner of lot No. 28; thence S. 43½° W. 85 feet 6 inches and ⅔ of an inch to a post the west corner of lot No. 28 and north corner of lot No. 18; 171 feet 1 inch and ⅓ of an inch to a post at the N. W. end of the N. E. edge of the cross street C, which post is the west corner of lot No. 18; 237 feet 1 inch and ⅓ of an inch to a post at the N. W. end of the S. W. edge of the cross street C, which post is the north corner of lot No. 60; 301 feet 3 inches and ⅓ of an inch to a post the west corner of lot No. 60 and north corner of lot No. 46; 365 feet 5 inches and ⅓ of an inch, equal to 5 chains and 52 links and a ¼ of a link, to the place of beginning.

Surveyed on the 5th of May, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this 1st day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MO., *St. Louis, September 4th*, 1854.

I certify that the foregoing plat and description of survey No 61, and the certificate thereto, are correctly transcribed from page 61 of the record in this office of surveys, in Peoria, Illinois.

JNO. LOUGHBOROUGH,
Surveyor General.

Plat of the new village of Peoria, and such of the out-lots and field-lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out-boundaries of the said town, and continued connection of out-lots and field-lots, situate on sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian.

[*For plat see original, page* 54.]

Description: Begin at the upper end of the southeastern edge of First street, on the northwest bank of lake Peoria; thence N. 46½° W., one hundred feet, to the eastern corner of unclaimed lot A, 420 feet 10 inches, the north corner of said unclaimed lot A at the northeast end of the S. E. edge of Second street, 486 feet 10 inches, to the N.

E. end of the N. W. edge of Second street; thence S. 43½° W. with the N. W. edge of Second street, 256 feet 8 inches, to the intersection with the N. E. edge of street A; thence N. 46½° W. with the N. E. edge of street A, 320 feet 10 inches, to the N. W. end of the N. E. edge of said street A; thence S. 43½° W., 66 feet, to the north corner of lot No. 66 at the N. W. end of the S. W. edge of said street A, 108 feet 9⅓ inches, the west corner of lot No. 66 and north corner of unclaimed lot C, 322 feet 8 inches, the west corner of unclaimed lot C and the north corner of lot No. 12, 408 feet 2⅔ inches, the west corner of lot No. 12 and the N. W. end of the N. E. edge of street B, 474 feet 2⅔ inches, the N. W. end of the S. W. edge of street B and the north corner of lot No. 8, 709 feet 6 inches, the north corner of lot No. 15, 795 feet and ⅔ of an inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15 and east corner of lot No. 61 and north corner of lot No. 28; thence N. 46½° W. with the N. E. boundary of lot No. 61, 15 chains and 40 links, to the north corner of lot No. 61; thence with the N. W. boundary of lot No. 61 S. 43½° W., 5 chains and 52¼ links, to the west corner of lot No. 61; thence with the S. W. boundary of lot No. 61 S. 46½° E., 4 chains and 94 links, to the north corner of lot No. 51 at the intersection of the N.W. boundary thereof with the S. W. boundary of lot No. 61; thence with the N. W. boundary of lot No. 51 S. 43½° W., 4 chains and 88 links, to the west corner of lot No. 51; thence with the S. W. boundary of lot No. 51 S. 46½° E., 6 chains and 10 links, to the north corner of lot No. 40 at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 51; thence with the N. W. boundary of lot No. 40 S. 43½° W., 3 chains and 23⅓ links, to the west corner of lot No. 40; thence with the S. W. boundary of lot No. 40 S. 46½° E., 4 chains 34 links, to the N. W. end of the N. E. edge of street E. on the S. W. boundary of lot No. 40; thence S. 43½° W., 66 feet, to the N. W. end of the S. W. edge of street E and the north corner of unclaimed lot E, 322 feet 8 inches, to the east corner of lot No. 31 at the intersection of the N. E. boundary thereof with the N. W. boundary of unclaimed lot E; thence with the N. E. boundary of lot No. 31 N. 46½° W., 13 chains and 16 links, to the north corner of lot No. 31; thence with the N. W. boundary of lot No. 31 S. 43½° W., 3 chains and 88 links, to the west corner of lot No. 31 at the intersection with the N. W. boundary thereof with the boundary of lot No. 37; thence with the N. E. boundary of lot No. 37 N. 46½° W., 5 chains and 5½ links, to the north corner of lot No. 37; thence with the N. W. boundary of lot No. 37 S. 43½° W., 7 chains and 66 links, to the west corner of lot No. 37; thence with the S. W. boundary of lot No. 37 S. 46½° E., 6 chains and 67½ links, to the north corner of lot No. 67 at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 37; thence with the N. W. boundary of lot No. 67 S. 43½° W., 6 chains, to the west corner of lot No. 67; thence with the S. W. boundary of lot No. 67 S. 46½° E., 6 chains and 38 links, to the south corner of lot No. 67 on the N. W. boundary of lot No. 64; thence S. 43½° W., 1 chain and 66 links,

the west corner of lot No. 64 and north corner of lot No. 20, 7 chains and 61 links, the west corner of lot No 20 and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence with the S. W. boundary of lot No. 48 S. 46½° E., 6 chains and 88 links, the point of intersection of the S. W. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 13 chains and 93 links N. 89½° W. of the corner of fractional sections 9 and 16 on the lake, 8 chains, to the south corner of lot No. 48; thence with the S. E. boundary of lot No. 48 N. 43½° E., 1 chain and 6 links, the point of intersection of the S. E. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 12 chains and 38 links N. 89½° W. of the corner to fractional sections 9 and 16 on the lake, 4 chains and 25 links, to the east corner of lot No. 48 on the S. W. boundary of lot No. 20; thence with the S. W. boundary of lot No. 20 S. 46½° E., 2 chains, to the south corner of lot No. 20; thence N. 43½° E., 5 chains and 95 links, the east corner of lot No. 20 and south corner of lot No. 64, 13 chains and 61 links, the east corner of lot No. 64 and south corner of lot No. 43, 21 chains and 27 links, to the east corner of lot No. 43 and south corner of lot No. 34 at the S. W. end of the N. W. edge of Second street; thence S. 46½° E., 66 feet, the S. W. end of the S. E. edge of Second street and west corner of lot No. 33, 386 feet 10 inches, the south corner of lot No. 33, 491 feet 1⅓ inches, to the lower end of the S. E. edge of First street, on the N. W. bank of lake Peoria; thence along the N W. bank of lake Peoria the following courses and distances: N. 38° E., 176 links; thence N. 42° E., 432 links; thence N. 17¾° E., 150 links; thence N. 78° E., 72 links; thence N. 47½° E., 417 links; thence N. 37° E., 188 links; thence N. 44¾° E., 2,448 links, to the place of beginning.

Then, for connection with the public surveys, run from said place of beginning along the N. W. bank of lake Peoria the following courses and distances: N. 44¾° E., 1,081 links; thence N. 50¾° E., 1,300 links, to the point of intersection of the section line between sections 9 and 10 with the N. W. bank of lake Peoria, which point is 2,406 links S., 0° 30′ W. of the corner to sections 3, 4, 9 and 10, township 8 north, range 8 east of the 4th principal meridian.

Also from the lower end of the S. E. edge of First street the following courses and distances along the bank of the lake were taken for connection: S. 51¾° W., 198 links; thence S. 39° W., 819 links; thence S. 41¼° W., 216 links; thence S. 49½° W., 287 links; thence S. 85° W., 116 links, to the point of intersection of the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 2,510 links S. 89° 30′ E. of the corner to sections 8, 9, 16 and 17, of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in

the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI, *St. Louis, January 31st*, 1854.

I certify that the foregoing plat of the new village of Peoria, and of such of the out-lots and field-lots in the neighborhood thereof as are connected with said new village, in one continuous survey and description of the out-boundaries of the said town, and continued connection of out-lots and field-lots situate on sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian, are correctly copied from the records of the surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

But the court overruled said objection, and said plats were given in evidence.

5th. He read a deposition of Antoine Bourbonne, which is as follows:

SAMUEL HART, ELIZABETH HART, JAMES SARGEANT, MARY L. SARGEANT, Pl'ffs,
vs.
CHARLES BALLANCE, Def't.

In the Circuit Court of the United States for the northern district of Illinois.

Deposition of witnesses produced, sworn and examined at Saint Louis, in the county of St. Louis, and State of Missouri, before me, S. J. Levi, a notary public, in a certain cause now pending in the circuit court of the United States for the northern district of Illinois, between Samuel Hart, Elizabeth Hart, James Sargeant and Mary L. Sargeant, plaintiffs, and Charles Ballance, defendant, on the part of the plaintiffs.

Antoine Bourbonne, produced, sworn and examined, deposes and says:

I am eighty years of age; I reside principally at St. Louis, State of Missouri; I did once reside in Peoria, in the State of Illinois; it was seven or eight years before the war of 1812. I was acquainted with Charles Labelle, in Peoria; I was very intimate with him; we worked together six or seven years; that was before the war; I helped Labelle to build his house; during the war of 1812 Labelle and myself was taken prisoners by Capt. Craig, and brought down the river, and

landed at Wood river, opposite the mouth of Missouri; Labelle is dead; he died at Wild Potato Prairie, on the Mississippi river; he died in my arms; I don't know positive the time of his death—I think it was about 30 years ago, while we were boating together; Labelle was a married man, and had four children, three daughters and one boy; the eldest daughter named Margaret; she was never married; she is now dead, and have been dead some twenty years. Elizabeth was the second daughter; she is now living, and married to Samuel Hart. The third daughter's name is Mary; she was married to Augustus Lafevere; he is now dead; she is a widow; he has been dead some six or seven years. The son's name is Charles; he never was married, to my knowledge; he has been dead some 16 or seventeen years ago. Charles Labelle wife is also dead. The lot that Labelle lived on was about 8, 9 or 10 arpens; it was bounded south by lot of Hypolite Maygan, or Malett. Labelle house was situated on the upper corner, opposite the river; Labelle had another lot between his house and the river; he used that to feed his cattle on; this lot was from ½ to 1 arpent; there was a fence that divided the two lots; there was a road made afterwards, which run in front of the lower lot.

Cross-examination by C. Ballance.

Ques. 1st. At the time you left Peoria, in 1812, was there not a pass-way or street between said two lots occupied by said Labelle?

Answer to the 1st question. Deponent says no; there was a road or street at the side of it; there was only one road—that was on the river side; there was no house on the small lot, except what was built for cattle; Labelle house was situated about one and half arpens from the river; the length of the large lot was about ten arpens—one and half arpens fronting the river, and eleven arpens running back; this includes both lots.

Question second. How long was the big lot?

Answer to the second question. I never measured it; it was about 4 arpens on the river.

Question. How wide was it?

Answer. It ran back about ten arpens. The little lot was about ½ arpent, if not more, wide, and an arpent in length. The little lot was opposite the other, fronting the big lot, below the house. The little lot was situated about 1½ arpens from the river; it might be more. The land rises until it comes to the bluff, then there is a bluff from Mr. La Belle ground to the bluff; I think it is about a mile; I never measured it. The land descended *were* the back fence was situated. There was no hill in the field; it was high prairie ground. The house was situated on the same kind of ground. There was a house opposite La Belle house, towards the river. Mr. Jack Matte resided there; his house was about 60 or 70 yards from the river. Mr. Racine occupied the land in front of La Belle house; he had a splendid garden there. Forsyth & Mettee had a garden there. The joint fence came opposite La Belle house. There was no fence that divided La Belle

lot from Forsyth & Racine garden; it is about 60 or 70 yards from La Belle house to fence dividing of Forsyth & Mette; it was about 16 feet from the corner of the lot to the upper side of the fence.

his
ANTOINE ⋈ BOURBONNE.
mark.

STATE OF MISSOURI,
County of St. Louis.

I, S. J. Levi, a notary public in and for said county, do hereby certify that Antoine Bourbonne, the defendant, whose place of residence is Saint Louis, in the State of Missouri, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined, and his examination reduced to writing and subscribed by said deponent, in my presence, on the 25th day of June, eighteen hundred and fifty-five, between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon, at St. Louis, in the county of St. Louis, and State of Missouri.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 25th day of June, 1855.

[SEAL.] S. J. LEVI,
Notary Public.

Endorsed: Opened for def't July 20, 1855.
WM. H. BRADLEY, *Clerk.*

6th. A deed from Mrs. Le Faivre to Mrs. Sargeant, which is as follows:

This deed made and entered into this the twenty-first day of January, in the year of our Lord one thousand eight hundred and fifty-one, by and between Mary Louisa Le Faive, of the county of Saint Louis and State of Missouri, party of the first part, and Mary L. Sargeant, wife of James T. Sargeant, of the city and county of St. Louis and State of Missouri, of the second part, witnesseth, that the party of the first part, for and in consideration of the sum of two thousand dollars, to her in hand paid by the party of the second part, the receipt of which is hereby acknowledged, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey and confirm to the party of the second part all the right, title, claim, interest and demand in and to the equal one undivided half of eight and one half acres of land, situated in Peoria county, and State of Illinois, being the one equal undivided half of claim number sixty-one, situated in the southeast and southwest fractional quarter, and the northwest quarter of fractional section 9, in fractional township 8 north of the base line, range 8 east of the 4 principal meridian, containing eight and one half acres, adjoining the new village, now the city of Peoria, State of Illinois, or in the limits of said city, confirmed to the heirs of Charles La Belle by an act of Congress approved March 3d, 1823, entitled

"An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, it being No. 61 of the report made by the register of the land office at Edwardsville, in pursuance of an act of Congress approved the 15th of May, 1820, entitled An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois, and more particularly described as follows: Commence at a post the south corner of this lot, west corner of lot No. 46, north corner of lot No. 49, and east corner of lot No. 51; thence N. 46½° W. 10 chains and 46 links to a post the north corner of lot 51; 11 chains and 96 links to a post at the intersection of the S. W. boundary of this lot with the line between the N. W. and S. W. quarter of section 9, township 8 north, range 8 east of the 4 principal meridian, said post being 9 chains and 60 links N. 89° 30′ west of a stone set by a former surveyor as a corner common to the N. E., N. W., S. W. and S. E. quarter of said section 9; 15 chains and 40 links to a post the west corner of this lot; thence N. 43½° E. 5 chains 52 links and ¼ of a link to a post the north corner of this lot; thence S. 46½° E. 9 chains and 84 links to a post at the intersection of the N. E. boundary of this lot with the line between the N. W. and S. W. quarter of section 9 of township 8 north, range 8 east of the 4th principal meridian, said post being 1 chain and 50 links N. 89° 30′ W. of a stone set by a former surveyor as a corner common to the N. E., N. W., S. W., and S. E. quarter of said section 9; 15 chains and 40 links to a post the east corner of this lot, west corner of lot No. 15, and north corner of lot No. 28; thence south 43½° W., 85 feet 6 inches and ⅔ of an inch to a post the west corner of lot No. 28 and north corner of lot No. 18; 171 feet 1 inch and ⅓ of an inch to a post at the N. W. end of the N. E. edge of the cross street C, which post is the west corner of lot No. 18; 237 feet 1 inch and ⅓ of an inch to a post at the N. W. end of the S. W. edge of the cross street C, which post is the north corner of lot No. 60; 301 feet 3 inches and ⅓ of an inch to a post the west corner of lot No. 6 and north corner of lot No. 43; 365 feet five inches and ⅓ of an inch, equal to 5 chains and 52 links and ¼ of a link, to the place of beginning, surveyed on 15 May, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date 11th April, 1837: To have and to hold the said one undivided half of the above described premises unto the said party of the second part, and to her heirs and legal representatives, to her and their sole, separate, and exclusive use, benefit, and behoof, free and clear from the control, management, and use of the husband of the party of the second part, and free and discharged of all debts, claims, and demands against the husband of the party of the second part; and it is hereby declared to be the express intention of this conveyance, and the object of the party of the first part, that the said premises shall be held, used, occupied and enjoyed by the party of the second part during her natural life, and after her death to the heirs and legal representatives of the party of the second part, free and discharged from the control, use,

and management of the husband of the party of the second part, and discharged from all claims, debts, and demands against said husband. And the said party of the first part hereby covenants to warrant and defend the title to said premises to the party of the second part, and her heirs and legal representatives, against all persons claiming by, through, or under the party of the first part, but against no other person or persons whomsoever. In testimony whereof, the said party of the first part hath hereunto set her hand and affixed her seal this the day and year first above written.

her
MARY LOUISA ⋈ LA FEIVE. [SEAL.]
mark.

In presence of M. L. GRAY.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that on this twenty-first day of January, eighteen hundred and fifty-one, before me, the subscriber, Melvin L. Gray, a commissioner in the county of St. Louis, in the State of Missouri aforesaid, appointed and duly commissioned by Thomas Ford, governor of the State of Illinois, to administer oaths, take depositions and the proof and acknowledgment of deeds and other instruments in writing, to be used or recorded in the said State of Illinois, personally appeared Mary Louisa La Feive, satisfactorily proved to me to be the individual described in and who executed the foregoing deed, by the oaths of Jesse C. Hart and Jediah M. Sargent, of the city of St. Louis, in said county, competent and credible witnesses, for that purpose by me duly sworn, and she acknowledged to me that she had executed the same.

In testimony whereof, I have hereunto set my hand and affixed my official seal, as such commissioner, at the county of St. Louis aforesaid, the day and year first herein written.

[SEAL.] MELVIN L. GRAY,
Commissioner as aforesaid.

Endorsed: Filed January 27th, 1851. Recorded in Book Y, pages 179–'80.

JACOB GALE, *R. P. Co.*

Also endorsed Exhibit "A," referred by the witness, Charles Le Faivre, in his deposition, and identified by the signatures of said witness and my own.

A. S. BARADA.
CHARLES LE FAIVRE.

St. Louis, November 6th, A. D. 1855.

Also deposition of Charles Le Faivre, which is as follows:

Deposition of a witness taken on the 6th day of November, A. D. eighteen hundred and fifty-five, between the hours of 10 o'clock a. m.

and 5 o'clock p. m. of that day, at the office of Messrs. Booth & Barada, in the city of Saint Louis, county of Saint Louis, State of Missouri, by the undersigned, A. L. Barada, the commissioner named in and appointed by the commission hereto annexed, the said time and place being the time and place designated and appointed for that purpose by the undersigned, and upon the enclosed interrogatories, and by virtue of the enclosed commission to be read in evidence in a certain suit now pending, undetermined in the circuit court of the United States for the northern district of Illinois, described in said commission and interrogatories, wherein Samuel Hart, Elizabeth Hart, James T. Sargeant, and Mary L. Sargeant, are plaintiffs, and Charles Ballance is defendant.

Deposition of Charles Le Faivre.

The said Charles Le Faivre, being first duly sworn to testify the truth in relation to the matter in controversy in the cause aforesaid, so far as he may be interrogated, doth depose and say on oath, in answer to the several interrogatories, as follows, to wit:

Interrogatory 1st. What is your age, residence, and occupation?

Answer. Nineteen years old on the 9th of January next. I live in this city, (St. Louis.) Pilot on the Illinois river, is my present occupation.

Interrogatory 2d. What were the names of your father and mother, and who was the father of your mother?

Answer. My father's name was Auguste Le Faivre; my mother's name Mary Louisa Le Faivre. The father of my mother was called Charles La Belle.

Interrogatory 3d. How do you spell your surname, and how is it pronounced in English?

Answer. I spell my name Le Faivre, and pronounce it Le Faivre.

Interrogatory 4th. Is your father now living; if so, where did he die, and when?

Answer. My father is not living; he died in this city, (St. Louis.)

Interrogatory 5th. Do you or not know whether your mother ever conveyed claim sixty-one, in the village of Peoria, as confirmed to Charles La Belle? If so, to whom did she convey such lot, and where, and were you or not present at the time such conveyance was made?

Answer. I believe my mother sold to James T. Sargeant and others. I was present at the signing.

Interrogatory 6th. Look at the deed shown you, purporting to be a deed from Mary Louisa Le Faivre to Mary L. Sargeant, and state whether or not the same was executed by your mother; and if so, attach a copy thereof to your deposition, marked Exhibit "A."

Answer. The deed now shown me by the commissioner is the same deed signed by Mary Louisa Le Faivre, and dated 21st day of January, A. D. 1851, marked Exhibit "A," and signed by myself and commissioner, this 6th day of November, A. D. 1855.

Interrogatory 7th. Do you know of any other matter or thing of advantage to said plaintiffs in this suit?

Answer. I do not.

CHARLES LE FAIVRE.

STATE OF MISSOURI,
City and County of St. Louis, ss.

I, A. S. Barada, the commissioner named in and appointed by the enclosed commission, do hereby certify that the said witness, Charles Le Faivre, prior to the taking of said deposition, and on the said 6th day of November, A. D. 1855, was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption to this deposition, and in the enclosed commission, so far as he might be interrogated in relation thereto, and that the said deposition was, on the 6th day of November, A. D. 1855, at the office of Messrs. Booth & Barada, in said city of St. Louis, county of St. Louis, and State of Missouri, taken and reduced to writing, and signed and sworn to by said witness in my presence, and the said deposition and interrogatories, and commission, and Exhibit "A," referred to in said deposition, are all now herewith returned to said court.

Given under my hand and seal, this 6th day of November, A. D. eighteen hundred and fifty-five.

A. S. BARADA. [SEAL.]

And the defendant admitted the plaintiffs had the title of the heirs of Charles La Belle.

Defendant then, to maintain the issue on his part, introduced in evidence, without objection—

1st. A certificate of pre-emption, which is as follows:

LAND OFFICE, QUINCY, ILL., 12*th April*, 1836.

I, Samuel Alexander, register of said office, do hereby certify that on the 28th day of July, 1832, Charles Ballance claimed and established a right of pre-emption to the southwest quarter of section No. nine, township eight north of the base line, and range eight east of the 4th principal meridian, as appears by documents on file in my office. Given from under my hand and seal the day and year aforesaid.

SAM'L ALEXANDER, *Register*. [SEAL.]

2d. A receipt of the receiver at Quincy, which is as follows:

Pre. Act, 1834.

No. 12,293.

RECEIVER'S OFFICE, QUINCY, ILLINOIS,
27*th November*, 1837.

Received from Charles Ballance, of Peoria county, Illinois, the sum of one hundred and eighty-four dollars and twenty-eight and ¾ cents, being in full payment for the southwest fractional quarter of section No. nine, township No. eight north of the base line, of range No. eight,

east of the 4th principal meridian, containing one hundred and forty-seven acres and $\frac{43}{100}$ of an acre, at the rate of one dollar and twenty-five cents per acre.

THO. CARLIN, *Receiver.*

$184 28¾.

Endorsed: Filed April 6th, A. D. 1854, and recorded in book G. A., page 142.

JACOB GALE,
Register P. Co.

3d. A certificate of the entry of said land, which is as follows:

U. S. LAND OFFICE, QUINCY, ILL.,
27th November, 1837.

I do hereby certify that Charles Ballance, of Peoria county, in the State of Illinois, did, on this day, enter or purchase at this office the southwest fractional quarter of fractional section No. 9, in township No. 8 north, of range No. 8, east of the 4th pl. meridian, containing one hundred and forty-seven and $\frac{43}{100}$ acres. Certificate No. 13,293, as appears of record in this office.

SAM'L LEECH, *Register.*

Endorsed: Filed April 6th, A. D. 1854, and recorded in G. A., page 142.

JACOB GALE,
Recorder P. Co.

4th. A deposition of Smith Frye, which is as follows:

I removed from the State of Pennsylvania to the town of Peoria, in the State of Illinois, in the year 1834; I have lived in Peoria and its immediate vicinity ever since; I am well acquainted with the lands in and about Peoria. As a means of obtaining that information, I have, a portion of the time, held the office of sheriff, a portion of the time held the office of county commissioner, and a portion of the time held the office of supervisor of the county of Peoria. When I went to live at Peoria, Charles Ballance was in the actual possession of a portion of the southwest quarter of section nine (9), township eight (8) north, of range eight (8), east of the fourth (4th) principal meridian, by having it enclosed by a substantial fence, claiming the whole of said quarter in his own right and against the claims of all other; and he has, ever since, so continued to hold and claim it, except as he has sold portions of it to others and yielded them the possession accordingly. Said Ballance did not then reside on said quarter, but on an adjoining fraction; but he has been actually residing on the same for more than twelve years last past. About 19 or 20 years ago, one Bigelow took possession of and enclosed a portion of said tract outside of said Ballance's enclosure, and said Ballance brought an action of ejectment against him, which was decided in favor of said Ballance by the circuit court of Peoria county, and a writ of possession issued upon said judgment to me as sheriff of said county, and I, as said sheriff, executed said writ

by putting said Ballance into possession of that portion. I have known instances of persons claiming under what are commonly called French claims, setting up claims to portions of said tract, and said Ballance resisting those claims. I never heard of said Ballance claiming under or subservient to those claims. He always professed to hold adversely to them. The portion of said tract that said Bigelow enclosed was northwest of Adams street.

SMITH FRYE.

Cross-examined.

Mr. Ballance had in actual possession, probably, from one to two acres of said quarter section; it was on the southeasterly part of said quarter section; I can't state precisely when Mr. Ballance first professed to hold adversely to the French claims; I don't think anything of any consequence was said about it till about the time Robert Forsyth commenced some suits upon them; he always said the claims were not worth anything; that he didn't care anything about them.

Mr. Vories was in possession of a part, owning forty-two acres in the northwest corner of said quarter section in 1834, and built on it in that year, and was living in the house when I came into the country in 1834, and had from two to three acres enclosed, and he and his family have lived on that tract ever since.

SMITH FRYE.

Written by me, and subscribed and sworn to before me.

J. T. MOULTON, *U. S. Com'r.*

July 17th, 1856.

Here it was admitted by plaintiff's counsel that Mr. Voris, spoken of in said deposition, always held so much of said tract as is and has been in his possession, by deed from said Ballance, and that said witness's residence commenced at Peoria more than twenty years before this suit was brought.

5th. He gave in evidence a plat showing so much of Ballance's addition to Peoria as is covered by lot fifty-one [sixty-one] of the French survey, which is as follows.

[*For plat see original, page* 79.]

The intersection of the lines near E is the centre of section nine. The black lines indicate a part of Ballance's survey of his addition to Peoria; the red lines represent French claim 61, as surveyed by T. C. Brown.

6th. Norman H. Purple sworn. He testified that he had lived in Peoria since July, 1837, except three years that he resided at Quincy, and then he was very often in Peoria; was a practising lawyer while residing at Peoria. Ever since he came to Peoria said Ballance has professed to hold the southwest quarter of section nine, township eight

north of the base line, and range eight east of the fourth principal meridian, in his own right and adversely to all others.

In answer to a question by plaintiff, he said he believed Mr. Ballance always professed to believe French claims good for nothing.

Plaintiff then gave in evidence a paper which purported to be a copy of an application made by said Ballance, to enter said land, which is as follows:

No. 13,293. *27th day of November*, 1837.

I, Charles Ballance, of Peoria county and State of Illinois, do hereby apply for the purchase of the southwest fractional qr. of section numbered nine, in township numbered eight north, of range numbered eight, east of the fourth principal meridian, containing one hundred and forty-seven $\frac{43}{100}$ acres, according to the returns of the surveyor general, for which I have agreed with the register to give at the rate of one dollar and twenty-five cents per acre; subject, however, to the rights of any and all persons claiming under act of Congress 3d March, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

C. BALLANCE.

I, Samuel Leech, register of the land office at Quincy, Illinois, do hereby certify that the frac'l qr. section above described contains 147 $\frac{43}{100}$ acres, as mentioned, and that the price agreed upon is $1 25 per acre. SAM'L LEECH, *Register*.

Pre. act, 1834.

LAND OFFICE, QUINCY, *Nov. 9th*, 1854.

I, A. C. Marsh, register of the land office at Quincy, Illinois, do hereby certify that the foregoing is a true and correct copy of the original application of Charles Ballance, now on file in this office.

A. C. MARSH, *Register*.

2d. A patent from the United States to said Ballance for said land, which is as follows:

Certificate No. 13,293.

The United States of America to all to whom these presents shall come, greeting:

Whereas Charles Ballance, of Peoria county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Quincy, whereby it appears that full payment has been made by the said Charles Ballance, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the southwest fractional quarter of section nine in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing one hundred and forty-seven acres and forty-three hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the

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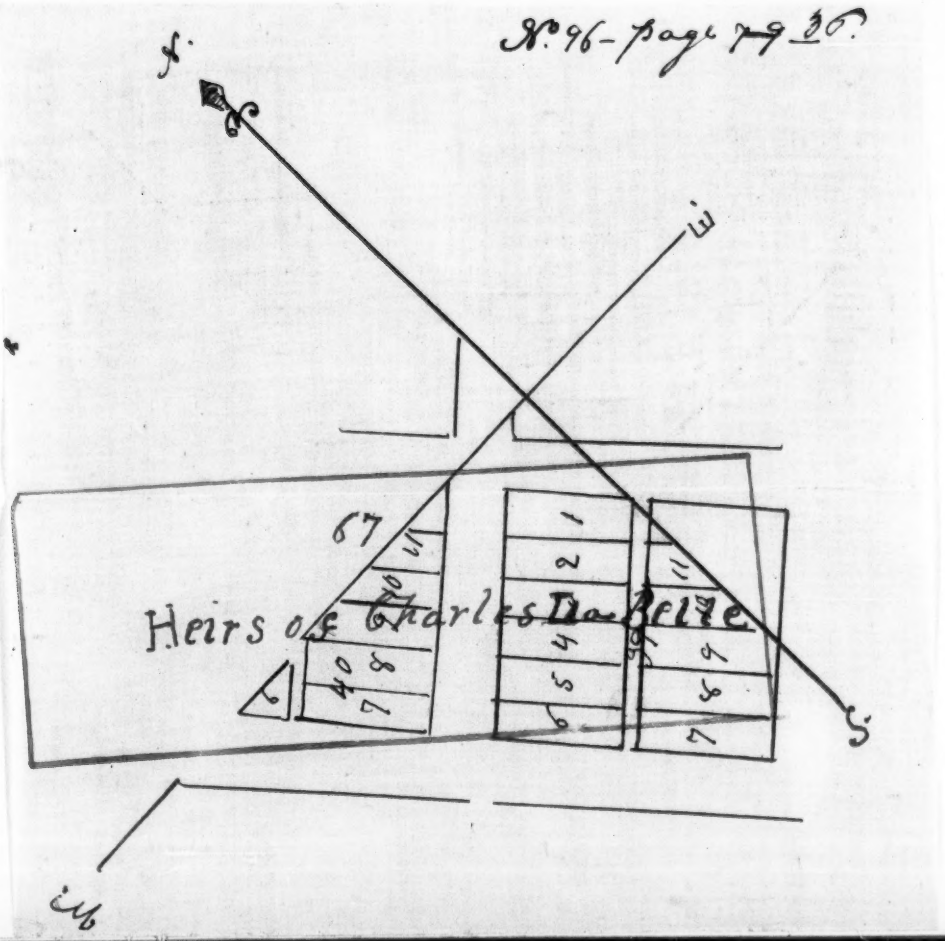

surveyor general, which said tract has been purchased by the said Charles Ballance:

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Charles Ballance, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatever nature, thereunto belonging, unto the said Charles Ballance and to his heirs and assigns forever; subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois." In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-second.

MARTIN VAN BUREN. [SEAL.]

By the President:

By A. VAN BUREN, *Sec'y*.

H. M. GARLAND,
Recorder of the General Land Office.

STATE OF ILLINOIS, *County of Peoria*.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder in and for said county of Peoria, do hereby certify the annexed patent from the United States to Charles Ballance, for the S. W. sec. 9, 8 N., 8 E., is duly recorded in said office, in Book P, page 478, on this 25th day of September, A. D. 1845.

CHARLES KETTELLE, *R. P. Co.*

It is admitted that the defendant cannot set up the statute of limitations against plaintiffs.

Whereupon defendant asked the court to instruct the jury that the title shown by defendant is a better title at law than that shown by the plaintiff, and consequently plaintiff cannot recover in this action.

2d. That whether defendant has title or not, plaintiff has shown no title upon which an action of ejectment can be supported.

Which instructions the court refused to give, but instructed the jury as follows:

HART et al.
vs.
BALLANCE.

A.—*Instructions of the Court.*

1. It being admitted that there is no question under the statutes of limitations, the only point is, who has the better or paramount title.

2. The act of 1820 and 1823, taken in connection with the report of the register of the land office at Edwardsville, and the survey of the surveyor general, vested the legal title for the purposes of this action in the heirs of Charles La Belle, the original claimants, if they were living, and if dead, in their legal representatives. Under our law an action of ejectment can be maintained by a party having the right and title under the acts of Congress, although the patent had not issued.

3. Under the circumstances detailed in evidence, and which were not disputed, the court is of opinion that the entry and patent of the defendant was subject to all rights under the act of 1823; that the defendants' title never included, and the government never intended it should include, the lot in controversy, if there was any one capable of taking the lot under the act of 1823.

4. The court is therefore of opinion that the plaintiffs may recover, though no patent was issued, and that the defendants' is not the better title.

To all of which rulings, decisions, and judgments, defendants then and there excepted, and prayed that this his bill of exceptions might be signed, sealed, and made of record, which is done, &c.

The above was all the evidence given to the jury.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed August 6th, 1856.

WM. H. BRADLEY, *Clerk.*

And on the 29th day of July, in said July term, A. D. 1856, of said court, said defendant filed in open court, with the clerk thereof, an appeal bond, in the words and figures following, to wit:

Circuit Court of the United States for the northern district of Illinois, July term, A. D. 1856.

SAMUEL HART et ux, et al., vs. CHARLES BALLANCE. } In Error.

Know all men by these presents, that we, Charles Ballance and Isaac Underhill, are held and firmly unto Samuel Hart et al., the plaintiffs in the above entitled suit, in the sum of two thousand dollars, to be paid to the said plaintiffs, their executors or administrators; to which payment whereof, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents; sealed with our seals, and dated this 25th day of July, A. D. 1856.

Whereas the above named Charles Ballance hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the above named court

at its present session: Now, therefore, the condition of this obligation is such, that if the above named Charles Ballance shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, but otherwise it shall remain in full force and virtue.

C. BALLANCE. [SEAL.]
ISAAC UNDERHILL, [SEAL.]
By his attorney in fact, C. BALLANCE.

Sealed and delivered in presence of—"two" inserted instead of "one," before signing—
Attest: WM. H. BRADLEY.

Security approved.

THOMAS DRUMMOND.

Endorsed: Filed July 29th, 1856.

WM. H. BRADLEY, *Clerk.*

And on the same day, to wit, the 29th day of July, A. D. 1856, the said defendant filed in said court, with the clerk thereof, his writ of error, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

The United States of America to the Judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Samuel Hart, Elizabeth Hart, James Sargeant, and Mary L. Sargeant, against Charles Ballance, a manifest error hath happened, to the great damage of the said Charles Ballance, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1856, and of our independence the 81st year. [SEAL.]

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed July 29th, 1856.

WM. H. BRADELY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss.*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript to be a full, true, and perfect copy from the record of all the proceedings which have been had in said court in said cause of Samuel Hart et al. against Charles Ballance, as the same now appears in my office, with the exception of an affidavit purporting to have been made on the 22d day of July, A. D. 1856, by the defendant, which has been lost or mislaid.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court at my office, in Chicago, in said district, this twenty-fifth day of October, A. D. 1856.

WM. H. BRADLEY, *Clerk.*

Said plaintiff in error, Charles Ballance, comes and says, that in the foregoing record and proceedings there is manifest error in this, to wit:

1st. Said court erred in refusing to require a consolidation of said suits.

2d. Said judgment is erroneous, because the amount of the costs is in blank.

3d. Said court erred in permitting "a part of said report" to be given. No part of said report, as printed in said volume, was evidence, there being no law making the volume containing it evidence. At any rate, *a part* could not be given in evidence. All that the book says on the subject should be given in *evi.*, or none.

4th. Said court erred in permitting said plats to be read to the jury, without further authentication.

5th. Said court erred in refusing the instructions asked for by plaintiff in error.

6th. Said court erred in giving the instructions that were actually given to the jury on this occasion.

7th. Said judgment ought to have been for said plaintiff in error, and not in favor of said defendant in error.

For all which, and other errors manifestly appearing in said record and proceedings, said plaintiff in error prays that said judgment may be set aside, disannulled, and for nothing esteemed.

C. BALLANCE,
For Plaintiff in Error.

Filed 15th January, 1857.